

Powers of arrest for cannabis

After over ten years, the law on cannabis is once again under review – but from the police point of view, a ‘parking ticket’ approach could have major repercussions

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IN A REPORT in 1978,¹ the Advisory Council on the Misuse of Drugs (ACMD) recommended that cannabis be reclassified to class C of the Misuse of Drugs Act, reducing the maximum period of imprisonment for its unlawful possession from five to two years. But this apparently ‘minor’ modification would have far-reaching consequences for enforcement.

The reduction in penalties would mean that unlawful possession of cannabis *would no longer be an ‘arrestable offence’* as defined by the Police and Criminal Evidence Act (PACE) 1984. The applicable subsection defines an arrestable offence as one for which a previously unconvicted person over 21 years of age may be sentenced to five years’ imprisonment.

Another section gives the police a general power of arrest for *any* offence:

- if the name and/or address of the suspect are unknown and cannot readily be ascertained, or are believed to be false;
- if the suspect fails to furnish what the police consider a satisfactory address for a summons.

If cannabis possession became a ‘non-arrestable’ offence, police would have to rely on this section to effect an arrest. Before doing so, police must try to persuade suspects to give their names and addresses. For obvious reasons, they would want to verify the information before allowing the suspect to leave.

How long could someone be required to wait while information is checked? Ten minutes has been held to be too long.² Any attempt to prevent the offender walking off would take the constable outside the execution of his duty.

No doubt some people reported for unlawful possession of cannabis would seek to establish alibi defences for the subsequent trial; others may give their friends’ (or enemies’!) names and addresses, resulting in confusion and possibly distress to innocent parties.

In addition, PACE gives police certain limited powers to enter and search premises occupied or controlled by an arrested person to search for evidence. Many cannabis users also use drugs such as heroin and cocaine. Very often, people arrested in possession of small amounts of cannabis are also engaged in drug

trafficking.

Many police officers know from experience that the investigation following an arrest for cannabis possession often results in the recovery of more cannabis, other controlled drugs, stolen goods, firearms, etc. Without this very useful power of search, police would have to obtain a search warrant or get the householder’s written consent – unlikely, especially if they have something to hide.

There would be problems too in proving guilt in court. In relation to drug offences, the prosecution must link:

- the finding of the drug in the defendant’s possession;
- its packaging (in a heat-sealed exhibit bag) in the defendant’s presence; and
- the examination of the drug by the scientist.

Unable to arrest a person in possession of cannabis, police would need to go to ludicrous lengths to satisfy these rules. The patrolling constable would need to carry plastic drug exhibit bags, exhibit labels and a portable heat sealer!

Cautioning for possession of cannabis is another area of concern. Not being under arrest, offenders would be under no legal obligation to appear at a police station to receive a caution. The outcome could be more prosecutions and fewer cautions, reversing the current trend.

A special provision *could* be made to retain cannabis possession as an arrestable offence, as recommended by the ACMD. However, this would create a major anomaly between cannabis and other class C drugs. Most of these are free from the prohibitions on importation, exportation and, when in the form of a medicinal product, possession, so as a result attract little attention from law enforcement agencies. Cannabis, however, *is* subject to these prohibitions, is widely used, and many thousands of people are arrested each year for cannabis offences.

Is a change in the law really necessary? Police stop and search techniques are now far more sensitive;³ police attitudes far more flexible in relation to cautioning for unlawful possession; and the courts are far more likely to impose non-custodial sentences for simple possession.

Custodial sentences for possession of cannabis must now be relatively rare: “[Recent cases] appear to indicate that a sentence of imprisonment... will not normally be appropriate on a second conviction for possession of cannabis; the point at which the ‘continual flouting’ of the statute leaves the court with the obligation to consider a custodial sentence seems to be about the fourth or fifth conviction.”⁴

1. ACMD. *Report on a review of the classification of controlled drugs and of penalties under schedules 2 and 4 of the Misuse of Drugs Act 1971*. Home Office, 1978.

2. Bentley v Brudzinski [1982]. *Criminal Law Review*: 825.

3. “Hard times for the capital’s cannabis users.” *Druglink*: November/December 1989.

4. Commentary on R. v Robinson-Coupar and Baxendale [1982]. *Criminal Law Review*: 536; see also R. v Osborne [1982]. *Criminal Law Review*: 834.